



# State Water Resources Control Board

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**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

**Division of Water Rights**  
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Governor

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## **NOTICE OF PUBLIC HEARING AND PRE-HEARING CONFERENCE**

**The State Water Resources Control Board will hold a hearing on Applications 18334X02, 30521, 30522, and 30552 of Pajaro Valley Water Management Agency to appropriate water from College Lake (Salsipuedes Creek), Harkins and Watsonville Sloughs, and Pajaro River (Murphy's Crossing) in Santa Cruz County**

**A Pre-Hearing Status Conference will commence  
on Monday, June 2, 2003, at 2:00 p.m.**

**at**

**Joe Serna Jr./Cal EPA Building  
Sierra Room – Second Floor  
1001 I Street, Sacramento**

**The hearing will commence on Monday, July 7, 2003 at 10:00 a.m.  
and continue, if necessary, on Tuesday, July 8, 2003 at 9:00 a.m.**

**at**

**Joe Serna Jr./Cal EPA Building  
Sierra Room – Second Floor  
1001 I Street, Sacramento**

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### **SUBJECT OF THE HEARING**

The purpose of this hearing is to receive evidence to be considered by the State Water Resources Control Board (SWRCB) in determining whether and under what conditions Pajaro Valley Water Management Agency's (PVWMA) petition for partial assignment of State Filed Application (SFA) 18334 (A18334X02) should be approved, or in the event it is not approved, whether a release from priority of SFA 18334 should be approved in favor of PVWMA's companion Applications A30521, A30522 and A30552.

### **PRE-HEARING CONFERENCE**

The hearing officer will conduct a pre-hearing status conference on June 2, 2003, at 2:00 p.m., to discuss the scope of the hearing, the status of protests, and any other appropriate procedural issues. The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. There will be no discussion during the

pre-hearing conference of the merits of the specific issues raised by the petition. Following the pre-hearing conference, the SWRCB may in its discretion modify this notice in whole or in part. All parties to the hearing must attend the pre-hearing conference. Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

## **BACKGROUND**

**State Filed Applications:** The Legislature has authorized the filing of applications by the state to appropriate water, which “is or may be required in the development and completion of the whole or any part of a general or coordinated plan looking toward the development, utilization, or conservation of the water resources of the state.” (Water Code § 10500.) These “state filed applications” (SFA) are held by the SWRCB. The SWRCB may release from priority or assign any portion of an application when “the release or assignment is for the purpose of development not in conflict with such general plan or coordinated plan or with water quality objectives established pursuant to law.” (Water Code § 10504.) The SWRCB may not release from priority or assign a state filed application if the county in which the water originates would be deprived of water necessary for its development. (Water Code §§ 10505, 10505.5.)

**State Filed Application 18334:** On September 24, 1958, the California Department of Water Resources filed SFA 18334. SFA 18334 proposes an appropriation of water from the Pajaro River for domestic, irrigation, municipal, industrial, and recreational purposes within an area generally described as being within T12S, R1&2E, and T13S, R2E, MDB&M in Santa Cruz County and Monterey County. The proposed amount of water to be appropriated under SFA 18334 for beneficial use is 200 cubic feet per second (cfs) (maximum diversion rate) to be diverted from January 1 to December 31 of each year to offstream storage at a proposed 21,000 acre-feet (af) reservoir. The proposed Point of Diversion (POD) under SFA 18334 is to be located at Pajaro Diversion Dam within SW¼ of Section 7, T12S, R3E, MDB&M; and the proposed Point of Rediversion (PORD) in Corn Cob Canyon (Watsonville Dam) is to be located within the SW¼ of Section 14, T12S, R2E, MDB&M.

**Proposed Project Description:** On December 23, 1996, PVWMA filed a petition for partial assignment of SFA 18334 (A18334X02). In A18334X02, PVWMA proposes an appropriation of water from Salsipuedes Creek (College Lake), Harkins and Watsonville Sloughs, and from the Pajaro River (Murphy’s Crossing) for recharge, irrigation, municipal, industrial, recreational, fish and wildlife preservation and/or enhancement, aquaculture, stock watering, and water quality purposes within Santa Cruz County and Monterey County. In the event that PVWMA’s petition for partial assignment is not approved by the SWRCB, PVWMA seeks a release from priority of SFA18334 in favor of companion water right Applications 30521 and 30522<sup>1</sup> filed on March 11, 1996, and Application 30552 filed on July 1, 1996. The total amount of water to be diverted under PVWMA’s petition or the applications is 10,600 acre-feet annually (afa) at a total combined maximum rate of diversion of 65 cubic-feet per second (cfs).<sup>2</sup>

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<sup>1</sup> Application 30522 was approved by the SWRCB and a permit was issued on June 8, 2000. The release from priority of SFA 18334 is still at issue if the PVWMA’s petition is not approved.

<sup>2</sup> Under A18334X02, the proposed diversion season is September 15 to May 31. Under A30521, A30522, and A30552, the proposed diversion season is November 1 to May 31.

Following is a description of the projects proposed under each application:

- Under A18334X02 or A30521, PVWMA seeks a right to directly divert water at a maximum rate of 20 cfs at the College Lake<sup>3</sup> pumping plant (POD #1). The total combined amount of water to be taken by direct diversion and storage during any one year will be limited to 3,000 afa.
- Under A18334X02 or A30522, PVWMA seeks a right to directly divert water at a maximum rate of 30 cfs from Harkins and Watsonville Sloughs<sup>4</sup> (POD # 2 and POD #3). The total combined amount of water to be taken by direct diversion and storage during any one year will be limited to 4,000 afa.
- Under A18334X02 or A30552, PVWMA seeks a right to directly divert water at a maximum rate of 15 cfs from the Pajaro River (Murphy's Crossing) (POD #4 and POD #5). The total combined amount of water to be taken by direct diversion and storage during any one year will be limited to 3,600 afa.

**Protests:** On July 27, 1997, the SWRCB issued a Notice of Application to Appropriate Water for PVWMA's petition for partial assignment of SFA 18334 (A18334X02) and companion applications A30521, A30522, and A30552. California Department of Fish and Game (CDF&G), California Coastal Commission (CCC) and Karl Hackamack filed protests to the petition and companion applications.

CDF&G's October 24, 1997, protest against A18334X02, A30521, A30522, and A30552 does not contain specific allegations of harm caused by the proposed project. It contains general statements about the importance of the habitat provided by the Pajaro River, Salsipuedes Creek, Harkins Slough, and Watsonville Slough; the necessity of maintaining adequate instream flow conditions for steelhead; and the necessity of maintaining adequate fresh water in the lagoon formed by the Pajaro River. The CDF&G's protest against A18334X02, A30521, and A30552 remains unresolved.<sup>5</sup>

CCC's November 14, 1997, protest to A18334X02, A30521, A30522, and A30552 alleges that the proposed project could alter the hydrology and affect the habitat values of Harkins and Watsonville Sloughs. CCC's protest against A18334X02, A30521, A30522, and A30552 is resolved, to the extent that CCC and PVWMA agreed on November 3, 1999, that any permits issued by the SWRCB pursuant to PVWMA's filings are made subject to certain protest dismissal conditions developed by CCC.<sup>6</sup>

Hackamack's September 23, 1997 protest against A18334X02 is based on injury to prior rights. Hackamack's protest against A18334X02 is resolved.<sup>7</sup>

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<sup>3</sup> College Lake area is a natural depression that regulates runoff from an 11,000-acre watershed tributary to Salsipuedes Creek thence Pajaro River. College Lake is annually drained by pumping water into Salsipuedes Creek.

<sup>4</sup> Harkins and Watsonville Sloughs regulate runoff from a 9,200-acre watershed tributary to the Pajaro River. Because of annual localized flooding, water is pumped from the sloughs into the Pajaro River.

<sup>5</sup> On January 18, 2000, CDF&G and PVWMA agreed to protest dismissal conditions that were incorporated as Permit Term 7 of Permit 21039 (A30522).

<sup>6</sup> On November 3, 1999, CCC and PVWMA agreed to protest dismissal conditions that were incorporated, by reference, as Permit Term 8 of Permit 21039 (A30522).

<sup>7</sup> On November 19, 1997, Hackamack's protest was dismissed based on Hackamack's and PVWMA's acceptance of a protest dismissal term to be included in any permit issued pursuant to A18334X02 stating that

**Compliance with the California Environmental Quality Act:** PVWMA is Lead Agency pursuant to the California Environmental Quality Act (CEQA), Public Resources Code 21000, et seq. The SWRCB is a responsible agency pursuant to CEQA. As Lead Agency, PVWMA's Board of Directors certified in May 1999 the *PVWMA Local Water Supply and Distribution Final Environmental Impact Report (EIR)*. This document relied on the *Final Program Environmental Impact Report on the Pajaro Valley Water Basin Management Plan*, certified by PVWMA's Board of Directors in December 1993, and also serves as a project EIR, providing detailed, site-specific project-level impact and mitigation analysis for the proposed local project components. The local projects evaluated at a project-level of detail in the EIR include Harkins Slough, Murphy Crossing, College Lake, and Coastal and Inland Distribution Systems.

### **KEY ISSUES**

The SWRCB's decision whether to approve or not approve PVWMA's petition for partial assignment of SFA 18334 will be based upon the record developed at the hearing. The Applicant, Protestants, and any interested parties should submit exhibits and testimony responsive to the following issues that will be considered during the hearing:

- 1. Will the SWRCB's partial assignment of SFA 18334 to PVWMA be for purposes of development that are not in conflict with a general and coordinated plan (within the meaning of Water Code section 10500) or with water quality objectives established pursuant to law?**
- 2. Is there water available for appropriation by the PVWMA? If so, when is water available and under what circumstances? Are other sources of surface water or groundwater available to the applicant during periods when water sought under the applications may not be available for appropriation? If so, what are they and how much water is available to serve the proposed project?**
- 3. Will approval of PVWMA's petition or applications result in any significant adverse public trust and/or environmental impacts? If so, what are the impacts? Can these impacts be avoided or mitigated to a level of non-significance? If so, how? What conditions, if any, should the SWRCB adopt to avoid or mitigate any adverse impacts on fish, wildlife, or other public trust resources that would otherwise occur as a result of approval of PVWMA's petition?**
- 4. Are the proposed appropriations in the public interest?**
- 5. Will the proposed appropriations cause injury to the prior rights of other legal users of the water?**

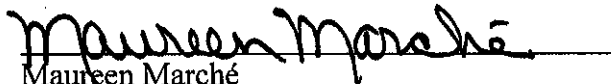
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any permit issued is "specifically subject to the prior right of Karl J. Hackamack under appropriation issued pursuant to Application 18946." This protest dismissal term will be included in any permits that may be issued pursuant to the petition and applications filed by PVWMA.



**IF YOU HAVE ANY QUESTIONS**

SWRCB Chairman Arthur G. Baggett, Jr. will be the hearing officer presiding over this proceeding. SWRCB hearing team members will be Barbara Katz, Senior Staff Counsel, Ernest Mona, Water Resources Engineer, and Jane Farwell, Staff Environmental Specialist. *Ex parte* communications with members of the Board or SWRCB staff on the hearing team regarding substantive or controversial procedural matters involved in the hearing are prohibited during the pendency of this proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding routine non-controversial procedural matters (See Gov. Code, § 11430.20, subd. (b).) should be directed to Barbara Katz at (916) 341-5192 ([bkatz@exec.swrcb.ca.gov](mailto:bkatz@exec.swrcb.ca.gov)) or Ernest Mona at (916) 341-5359 ([emona@waterrights.swrcb.ca.gov](mailto:emona@waterrights.swrcb.ca.gov)).

  
Maureen Marché  
Clerk to the Board

Enclosure

Date: April 18, 2003

EM:llv 04/16/03

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**CERTIFIED MAIL  
SERVICE LIST  
Hearing on Application  
18334X02, 30521, 30522, 30552**

**Dated: 02/26/03**

Charles McNiesh  
General Manager  
Pajaro Valley Water  
Management Agency  
36 Brennan Street  
Watsonville, CA 95076

District Manager  
Central Coast District Office  
California Coastal Commission  
725 Front Street, Suite 300  
Santa Cruz, CA 95060

Regional Manager  
Central Coast Region  
Calif. Dept. of Fish and Game  
P.O. Box 47  
Yountville, CA 94599

Karl J. Hackamack  
211 Smith Road  
Watsonville, CA 95076

Santa Cruz County  
Board of Supervisors  
701 Ocean Street  
Santa Cruz, CA 95060

Monterey County  
Board of Supervisors  
P.O. Box 1728  
Salinas, CA 93902

**REGULAR MAIL  
SERVICE LIST  
Hearing on Application  
18334X02, 30521, 30522, 30552**

**Dated: 02/26/03**

Lorraine Boyle  
168 Las Colinas Drive  
Watsonville, CA 95076

J & D Jertberg  
1700 Little Hill Lane  
Watsonville, CA 95076

**Mandatory Mailing List for  
Water Right Hearings**

B-4

California Environmental  
Protection Agency  
c/o Winston H. Hickox  
Secretary for Env. Prot.  
1001 I Street, 25<sup>th</sup> Floor  
Sacramento, CA 95814

California Farm Bureau Fed.  
c/o William Dubois  
Natural Resources Consultant  
11th & L Building, Room 626  
Sacramento, CA 95814

The Associated Press  
1215 K Street, Suite 960  
Sacramento, CA 95814

Yuba-Sutter Appeal Democrat  
P.O. Box 431  
Marysville, CA 95901

Stetson Engineering  
c/o Ali Shahrwody  
2171 E. Francisco Blvd, Ste. K  
San Rafael, CA 94901

Nino J. Mascolo  
Southern California  
Edison Company  
2244 Walnut Grove Avenue  
Rosemead, CA 91770

Bartkiewicz, Kronick  
& Shanahan  
c/o Alan B. Lilly  
1011 Twenty-Second Street  
Sacramento, CA 95816-4907

Calif. Fisheries Restoration  
Foundation  
c/o Martin Seldon  
1146 Pulora Court  
Sunnyvale, CA 94087-2331

Bob Baiocchi, Consultant  
P.O. Box 1790  
Graeagle, CA 96103

Flycasters, Inc.  
Mondy Lariz  
2353 Venndale Ave  
San Jose, CA 95124-4930

U.S. Bureau of Reclamation  
MP-440  
2800 Cottage Way  
Sacramento, CA 95825

Mr. Larry Week, Chief  
Native Anadromous Fish and  
Watershed Branch  
Calif Department of Fish & Game  
1416 9th Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

U.S. Fish & Wildlife Service  
Ecological Division  
2800 Cottage Way, Room E1803  
Sacramento, CA 95825

Sierra Club  
c/o Mr. Bob Rutemoeller  
P.O. Box 587  
Gualala, CA 95445-0587

Ms. Nancee Murray, SSC  
Calif Department of Fish & Game  
Office of General Counsel  
1416 9th Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814



City of Los Angeles  
c/o Mr. Eric P. Bock, P.E.  
Department of Water & Power  
Los Angeles Aqueduct Division  
111 North Hope Street, Rm 1469  
Los Angeles, CA 90012

Pechanga Indian Reservation  
c/o Mr. Vincent B. Ibanez  
P.O. Box 181  
Temecula, CA 92390

City Attorney's Office  
214 Van Ness Avenue  
San Francisco, Ca 94102

Mr. John A. Hecht, P.E., President  
West Coast Environmental  
and Engineering  
4253 Transport Street, Suite A  
Ventura, CA 93003

U.S. Fish & Wildlife Services  
Ventura Fish & Wildlife Office  
2493 Portola Road, Suite B  
Ventura, CA 93003

G-4  
Dept. of Boating & Waterways  
c/o Mr. Mike Ammon  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815-3888

Cary F. Wright  
242 East J Street  
Chula Vista, CA 91910

California Sportfishing  
Protection Alliance  
c/o Jim Crenshaw, President  
1248 East Oak Avenue  
Woodland, CA 95695

Esther Schwartz  
Capital Reporters  
1300 Ethan Way, Suite 225  
Sacramento, CA 95825

Myrlys L. Stockdale  
Public Information Officer  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Roger W. Briggs  
Executive Officer  
RWQCB, Central Coast Region (3)  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

## Enclosure 1

### INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-649.6 and 760, as they currently exist or may be amended. A copy of the current regulations, and the underlying statutes, governing adjudicative proceedings before the State Water Resources Control Board (SWRCB) is available upon request or may be viewed at the SWRCB's web site:  
[http://www.swrcb.ca.gov/water\\_laws/](http://www.swrcb.ca.gov/water_laws/).

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the applicants/petitioners and persons or entities who have filed unresolved protests or objections, and any other persons or entities authorized by the hearing officer to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity who appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file a Notice of Intent to Appear and two copies thereof which must be received by the SWRCB no later than **4:00 p.m. on Friday, May 9, 2003**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

The Notice of Intent to Appear must state the name and address of the participant; and if the participant is a party or desires to be recognized as a party, the name of each witness who will testify on the participant's behalf; a brief description of the proposed testimony; and an estimate of the time, not to exceed 20 minutes, that the witness will

take to present a brief oral summary of the witness's testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants should indicate how they intend to participate in the hearing by marking the appropriate box on the Notice of Intent to Appear. Participants who do not intend to present a case in chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case in chief after having submitted a Notice of Intent to Appear should notify the SWRCB and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the SWRCB encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the SWRCB in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to either submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

Following receipt of the Notices of Intent to Appear, the SWRCB will mail to each participant who has submitted a notice a service list of participants. The service list will indicate which participants agreed to accept electronic service. No later than **4:00 p.m. on Tuesday, May 20, 2003**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the SWRCB and the participants on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities who have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.<sup>1</sup> Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the SWRCB either: (1) six paper copies of each of its exhibits or (2) two paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic

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<sup>1</sup> The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the SWRCB and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the SWRCB and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the SWRCB by **4:00 p.m. on Monday, June 9, 2003**, and served on the other participants on or before that date.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
  - b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the SWRCB and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the SWRCB before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the SWRCB of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the SWRCB's files where the document may be found.
  - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant.
  - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the SWRCB in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the SWRCB and served on the other parties, unless the hearing officer specifies otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel 97 (preferred) or Word 97. Electronic submittals to the SWRCB of documents less than 5 megabytes in size may be sent via electronic mail to: [WrHearing@waterrights.swrcb.ca.gov](mailto:WrHearing@waterrights.swrcb.ca.gov) with subject of “**Hearing on Application 18334X02, 30521, 30522, 30552.**” Electronic submittals to the SWRCB of documents greater than 5 megabytes in size should be sent by mail, in PDF format, on ZIP™, JAZ™, or compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the SWRCB, but should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the SWRCB. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings/CurrentProjects.htm>

6. **ORDER OF PROCEEDING:** The SWRCB member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events. The time limits specified below may be changed by the Hearing Officer, at his discretion, as a result of the pre-hearing conference.
  - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (c), the SWRCB will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after the hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
    - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
    - ii. The SWRCB requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
  - b. **Presentation of Cases in Chief:** Each participant may present a case in chief addressing the key issues identified in the hearing notice. The case in chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross examination of the participant’s witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant’s exhibits in evidence upon a motion of the participant after the case in chief has been completed.

- i. **Opening Statements:** At the beginning of a case in chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case in chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.
  - ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.<sup>2</sup> Each participant will be allowed up to two hours total to present all of its direct testimony.<sup>3</sup>
  - iii. **Cross Examination:** Cross examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, the hearing officer will decide whether the participant's witnesses will be cross examined as a panel. Cross examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by the hearing officer will be limited to the scope of the cross examination and the redirect examination, respectively. Witnesses may be cross examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB members and staff may cross examine any witness.
- c. **Rebuttal:** After all participants have presented their cases in chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case in chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case in chief, and it does not include evidence that should have been presented during the presenter's case in

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<sup>2</sup> The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

<sup>3</sup> The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case in chief.

chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.

- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer decides to request briefs, the briefs will be due no earlier than 30 days after the estimated date of availability of the Reporter's Transcript. If the hearing officer authorizes the participants to file briefs, six copies of each brief shall be submitted to the SWRCB, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.
- e. **Large Format Exhibits:** Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.

7. **AUDIO-VISUAL EQUIPMENT:** Participants who require Audio-Visual Equipment for their presentations should contact the Division one week prior to the first day of hearing to make arrangements with staff.

8. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or SWRCB staff and any of the participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding noncontroversial procedural matters are permissible, but ordinarily should be directed to SWRCB staff, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).)

9. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.

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10. **SUBMITTALS TO THE SWRCB:** Notices of Intent to Appear, written testimony and other exhibits submitted to the SWRCB should be addressed as follows:

Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Attn: Ernest Mona**

**Phone: (916) 341-5359 Fax: (916) 341-5400**

**Email: [WrHearing@waterrights.swrcb.ca.gov](mailto:WrHearing@waterrights.swrcb.ca.gov)**

OR

**Email: [emona@waterrights.swrcb.ca.gov](mailto:emona@waterrights.swrcb.ca.gov)**

**With Subject of “Hearing on Application 18334X02, 30521, 30522, 30552”**



## STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

The following will be offered, by reference, as staff exhibits at the July 7 and 8, 2003 water right hearing:

1. All water right files related to SFA 18334 and Applications 18334X02, 30521, 30522, 30552.
2. Topographic maps published by the United States Geological Survey covering the area of consideration.
3. United States Geological Survey, "Water Resource Data, California" for the period of published record, covering the Pajaro River watershed.
4. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, "Climatological Data of California" for the period of published record, covering the Pajaro River watershed.
5. DWR Bulletin No. 230, "Index to Sources of Hydrological Data" and all pertinent data available from the Water Data Information System and all predecessor publications (Bulletins No. 130 and 23), covering the Pajaro River watershed.
6. Water Quality Control Plan, Central Coast Region, as originally approved by the State Water Resources Control Board, and any amendments thereto.



**Application 18334X02, 30521, 30522, 30552: Water Right Hearing  
Exhibit Identification Index**

Participant \_\_\_\_\_

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice